

AMENDED IN SENATE JULY 22, 2003

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AMENDED IN ASSEMBLY APRIL 29, 2003

AMENDED IN ASSEMBLY MARCH 26, 2003

AMENDED IN ASSEMBLY MARCH 12, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

## ASSEMBLY BILL

**No. 262**

**Introduced by Assembly Member Chan**  
**(Coauthors: Assembly Members Hancock, Jackson, Steinberg,**  
**and Vargas)**

February 4, 2003

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~~An act to add Section 4334 to the Business and Professions Code, and~~  
*An act to amend Sections 56.05, 56.10, 56.11, 56.17, and 56.21 56.21,*  
*and 56.268 of the Civil Code, relating to personal information.*

### LEGISLATIVE COUNSEL'S DIGEST

AB 262, as amended, Chan. Personal information.

~~(1) Under the Pharmacy Law, the California State Board of Pharmacy licenses persons who are authorized to dispense prescription drugs and devices, as specified, and is authorized to discipline those licensees for unprofessional conduct, including suspending or revoking a license. If no other penalty is provided, law provides that a knowing violation of that law is punishable as a misdemeanor and any other violation is punishable as an infraction.~~

~~This bill would add to those provisions, a provision making it unlawful to directly or indirectly sell or otherwise transfer to any person not directly involved in filling prescriptions by that pharmacy or for that pharmacist, information or data related to prescriptions filled by the pharmacy or pharmacist if the information or data includes the name, address, telephone number, fax number, e-mail, or any other identifiable information of the prescribing physician.~~

~~The bill would also require the board to investigate a licensed pharmacist who is alleged to have violated the disciplinary provisions of the Pharmacy Law, or who is alleged that he or she knows or reasonably should know of the unlawful sale of that information or data, and to take disciplinary action if it is determined that law has been violated.~~

~~(2)~~

(1) Existing law prohibits a provider of health care, a health care service plan, contractor, or corporation and its subsidiaries and affiliates from intentionally sharing, selling, or otherwise using any medical information, as defined, for any purpose not necessary to provide health care services to a patient, except as expressly authorized by the patient, enrollee, or subscriber, as specified, or as otherwise required or authorized by law. Violations of these provisions are subject to a civil action for compensatory and punitive damages, and, if a violation results in economic loss or personal injury to a patient, it is punishable as a misdemeanor.

This bill would provide that this prohibition also applies to the marketing of medical information, as defined, excluding from the definition of ~~market~~ *marketing*, for these purposes, communications for which the communicator does not receive remuneration from a 3rd party or for specified descriptive purposes, or that are tailored to the circumstances of a particular individual, as specified.

~~(3) The bill would add to these provisions a provision prohibiting a provider of health care, a health care service plan, or a contractor from being remunerated for providing any information or data relating to a prescription if it includes identifiable information concerning the prescribing physician, as specified.~~

(2) Existing law requires that specified printed authorizations for the disclosure of medical information be in 8-point type.

This bill would require that those authorizations be printed in 12-point type.

~~(4)~~

(3) By expanding the definition of the above crimes, this bill would impose a state-mandated local program.

(5)

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 ~~SECTION 1. Section 4334 is added to the Business and~~  
2 ~~Professions Code, to read:~~

3 ~~4334. (a) Except as otherwise required by law, it is unlawful~~  
4 ~~to directly or indirectly sell or otherwise transfer to any person not~~  
5 ~~directly involved in filling a prescription, any information or data~~  
6 ~~related to a prescription filled by a pharmacy or licensed~~  
7 ~~pharmacist if the information or data includes the name, address,~~  
8 ~~telephone number, fax number, e-mail, or any other identifiable~~  
9 ~~information of the prescribing physician.~~

10 ~~(b) If a licensed pharmacist is alleged to have violated this~~  
11 ~~chapter, or if it is alleged that a licensed pharmacist knows or~~  
12 ~~reasonably should know of the unlawful sale or transfer of~~  
13 ~~information or data described in subdivision (a) to any person not~~  
14 ~~directly involved in the filling of prescriptions by that pharmacy~~  
15 ~~or for that pharmacist, the board shall investigate, and shall take~~  
16 ~~action pursuant to Section 4300 if it is determined that this chapter~~  
17 ~~has been violated.~~

18 ~~SEC. 2.~~

19 ~~SECTION 1.~~ Section 56.05 of the Civil Code is amended to  
20 read:

21 56.05. For purposes of this part:

22 (a) "Authorization" means permission granted in accordance  
23 with Section 56.11 or 56.21 for the disclosure of medical  
24 information.

(b) “Authorized recipient” means any person who is authorized to receive medical information pursuant to Section 56.10 or 56.20.

(c) “Contractor” means any person or entity that is a medical group, independent practice association, pharmaceutical benefits manager, or a medical service organization and is not a health care service plan or provider of health care. “Contractor” does not include insurance institutions as defined in subdivision (k) of Section 791.02 of the Insurance Code or pharmaceutical benefits managers licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(d) “Health care service plan” means any entity regulated pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(e) “Licensed health care professional” means any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, the Osteopathic Initiative Act or the Chiropractic Initiative Act, or Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(f) ~~“Market”~~ “Marketing” means to make a communication about a product or service that encourages recipients of the communication to purchase or use the product or service.

~~“Market”~~

“Marketing” does not include any of the following:

(1) Communications made orally or in writing for which the communicator does not receive direct or indirect remuneration, including, but not limited to, gifts, fees, payments, subsidies, or other economic benefits, from a third party for making the communication.

(2) Communications made to current enrollees solely for the purpose of describing a provider’s participation in an existing health care provider network or health plan network of a Knox-Keene licensed health plan to which the enrollees already subscribe; communications made to current enrollees solely for the purpose of describing if, and the extent to which, a product or service, or payment for a product or service, is provided by a provider, contractor, or plan or included in a plan of benefits of a

1 Knox-Keene licensed health plan to which the enrollees already  
2 subscribe; or communications made to plan enrollees describing  
3 the availability of less expensive pharmaceuticals.

4 ~~(3) Communications that are tailored to the circumstances of a~~  
5 ~~particular individual, if the communications are either made by a~~  
6 ~~health care provider to an individual as part of the treatment of the~~  
7 ~~individual, and for the purpose of furthering the treatment of that~~  
8 ~~individual, or made by a health care provider, contractor, or health~~  
9 ~~plan to an individual in the course of managing the treatment of~~  
10 ~~that individual or for the purpose of directing or recommending to~~  
11 ~~that individual alternative treatments, therapies, health care~~  
12 ~~providers, or settings of care, so long as the health care provider,~~  
13 ~~contractor, or health plan does not receive direct or indirect~~  
14 ~~remuneration, including, but not limited to, gifts, fees, payments,~~  
15 ~~subsidies, or other economic benefits, from a third party for~~  
16 ~~making the communication.~~

17 ~~(4)~~

18 (3) Communications that are tailored to the circumstances of a  
19 particular individual to educate or advise the individual about  
20 treatment options, and otherwise maintain the individual's  
21 adherence to a prescribed course of medical treatment, as provided  
22 in Section 1399.901 of the Health and Safety Code, for a *chronic*  
23 *and* seriously debilitating or life-threatening condition as defined  
24 in ~~subdivision (a) of Section 1370.4 subdivisions (d) and (e) of~~  
25 *Section 1367.21* of the Health and Safety Code, if the health care  
26 provider, contractor, or health plan receives direct or indirect  
27 remuneration, including, but not limited to, gifts, fees, payments,  
28 subsidies, or other economic benefits, from a third party for  
29 making the communication, if all of the following apply:

30 (A) The individual receiving the communication is notified in  
31 the communication in typeface no smaller than 12-point type of the  
32 fact that the provider, contractor, or health plan has been  
33 remunerated and the source of the remuneration.

34 (B) The individual is provided the opportunity to opt out of  
35 receiving future *remunerated* communications.

36 (C) The communication contains instructions in typeface no  
37 smaller than 12-point type describing how the individual can opt  
38 out of receiving further communications by calling a toll-free  
39 number of the health care provider, contractor, or health plan  
40 making the ~~communication~~ *remunerated communications*. No

1 further communication may be made to an individual who has  
2 opted out after 30 calendar days from the date the individual makes  
3 the opt out request.

4 (g) “Medical information” means any individually  
5 identifiable information, in electronic or physical form, in  
6 possession of or derived from a provider of health care, health care  
7 service plan, pharmaceutical company, or contractor regarding a  
8 patient’s medical history, mental or physical condition, or  
9 treatment. “Individually identifiable” means that the medical  
10 information includes or contains any element of personal  
11 identifying information sufficient to allow identification of the  
12 individual, such as the patient’s name, address, electronic mail  
13 address, telephone number, or social security number, or other  
14 information that, alone or in combination with other publicly  
15 available information, reveals the individual’s identity.

16 (h) “Patient” means any natural person, whether or not still  
17 living, who received health care services from a provider of health  
18 care and to whom medical information pertains.

19 (i) “Pharmaceutical company” means any company or  
20 business, or an agent or representative thereof, that manufactures,  
21 sells, or distributes pharmaceuticals, medications, or prescription  
22 drugs. “Pharmaceutical company” does not include a  
23 pharmaceutical benefits manager, as included in subdivision (c),  
24 or a provider of health care.

25 (j) “Provider of health care” means any person licensed or  
26 certified pursuant to Division 2 (commencing with Section 500)  
27 of the Business and Professions Code; any person licensed  
28 pursuant to the Osteopathic Initiative Act or the Chiropractic  
29 Initiative Act; any person certified pursuant to Division 2.5  
30 (commencing with Section 1797) of the Health and Safety Code;  
31 any clinic, health dispensary, or health facility licensed pursuant  
32 to Division 2 (commencing with Section 1200) of the Health and  
33 Safety Code. “Provider of health care” does not include insurance  
34 institutions as defined in subdivision (k) of Section 791.02 of the  
35 Insurance Code.

36 ~~SEC. 3.~~

37 *SEC. 2.* Section 56.10 of the Civil Code is amended to read:

38 56.10. (a) No provider of health care, health care service  
39 plan, or contractor shall disclose medical information regarding a  
40 patient of the provider of health care or an enrollee or subscriber

1 of a health care service plan without first obtaining an  
2 authorization, except as provided in subdivision (b) or (c).

3 (b) A provider of health care, a health care service plan, or a  
4 contractor shall disclose medical information if the disclosure is  
5 compelled by any of the following:

6 (1) By a court pursuant to an order of that court.

7 (2) By a board, commission, or administrative agency for  
8 purposes of adjudication pursuant to its lawful authority.

9 (3) By a party to a proceeding before a court or administrative  
10 agency pursuant to a subpoena, subpoena duces tecum, notice to  
11 appear served pursuant to Section 1987 of the Code of Civil  
12 Procedure, or any provision authorizing discovery in a proceeding  
13 before a court or administrative agency.

14 (4) By a board, commission, or administrative agency pursuant  
15 to an investigative subpoena issued under Article 2 (commencing  
16 with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title  
17 2 of the Government Code.

18 (5) By an arbitrator or arbitration panel, when arbitration is  
19 lawfully requested by either party, pursuant to a subpoena duces  
20 tecum issued under Section 1282.6 of the Code of Civil Procedure,  
21 or any other provision authorizing discovery in a proceeding  
22 before an arbitrator or arbitration panel.

23 (6) By a search warrant lawfully issued to a governmental law  
24 enforcement agency.

25 (7) By the patient or the patient's representative pursuant to  
26 Chapter 1 (commencing with Section 123100) of Part 1 of  
27 Division 106 of the Health and Safety Code.

28 (8) By a coroner, when requested in the course of an  
29 investigation by the coroner's office for the purpose of identifying  
30 the decedent or locating next of kin, or when investigating deaths  
31 that may involve public health concerns, organ or tissue donation,  
32 child abuse, elder abuse, suicides, poisonings, accidents, sudden  
33 infant death, suspicious deaths, unknown deaths, or criminal  
34 deaths, or when otherwise authorized by the decedent's  
35 representative. Medical information requested by the coroner  
36 under this paragraph shall be limited to information regarding the  
37 patient who is the decedent and who is the subject of the  
38 investigation and shall be disclosed to the coroner without delay  
39 upon request.

40 (9) When otherwise specifically required by law.



1 (c) A provider of health care, or a health care service plan may  
2 disclose medical information as follows:

3 (1) The information may be disclosed to providers of health  
4 care, health care service plans, contractors, or other health care  
5 professionals or facilities for purposes of diagnosis or treatment of  
6 the patient. This includes, in an emergency situation, the  
7 communication of patient information by radio transmission or  
8 other means between emergency medical personnel at the scene of  
9 an emergency, or in an emergency medical transport vehicle, and  
10 emergency medical personnel at a health facility licensed pursuant  
11 to Chapter 2 (commencing with Section 1250) of Division 2 of the  
12 Health and Safety Code.

13 (2) The information may be disclosed to an insurer, employer,  
14 health care service plan, hospital service plan, employee benefit  
15 plan, governmental authority, contractor, or any other person or  
16 entity responsible for paying for health care services rendered to  
17 the patient, to the extent necessary to allow responsibility for  
18 payment to be determined and payment to be made. If (A) the  
19 patient is, by reason of a comatose or other disabling medical  
20 condition, unable to consent to the disclosure of medical  
21 information and (B) no other arrangements have been made to pay  
22 for the health care services being rendered to the patient, the  
23 information may be disclosed to a governmental authority to the  
24 extent necessary to determine the patient's eligibility for, and to  
25 obtain, payment under a governmental program for health care  
26 services provided to the patient. The information may also be  
27 disclosed to another provider of health care or health care service  
28 plan as necessary to assist the other provider or health care service  
29 plan in obtaining payment for health care services rendered by that  
30 provider of health care or health care service plan to the patient.

31 (3) The information may be disclosed to any person or entity  
32 that provides billing, claims management, medical data  
33 processing, or other administrative services for providers of health  
34 care or health care service plans or for any of the persons or entities  
35 specified in paragraph (2). However, no information so disclosed  
36 shall be further disclosed by the recipient in any way that would  
37 be violative of this part.

38 (4) The information may be disclosed to organized committees  
39 and agents of professional societies or of medical staffs of licensed  
40 hospitals, licensed health care service plans, professional



standards review organizations, independent medical review organizations and their selected reviewers, utilization and quality control peer review organizations as established by Congress in Public Law 97-248 in 1982, contractors, or persons or organizations insuring, responsible for, or defending professional liability that a provider may incur, if the committees, agents, health care service plans, organizations, reviewers, contractors, or persons are engaged in reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.

(5) The information in the possession of any provider of health care or health care service plan may be reviewed by any private or public body responsible for licensing or accrediting the provider of health care or health care service plan. However, no patient-identifying medical information may be removed from the premises except as expressly permitted or required elsewhere by law, nor shall that information be further disclosed by the recipient in any way that would violate this part.

(6) The information may be disclosed to the county coroner in the course of an investigation by the coroner's office when requested for all purposes not included in paragraph (8) of subdivision (b).

(7) The information may be disclosed to public agencies, clinical investigators, including investigators conducting epidemiologic studies, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide research purposes. However, no information so disclosed shall be further disclosed by the recipient in any way that would disclose the identity of any patient or be violative of this part.

(8) A provider of health care or health care service plan that has created medical information as a result of employment-related health care services to an employee conducted at the specific prior written request and expense of the employer may disclose to the employee's employer that part of the information that:

(A) Is relevant in a lawsuit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment,

1 provided that information may only be used or disclosed in  
2 connection with that proceeding.

3 (B) Describes functional limitations of the patient that may  
4 entitle the patient to leave from work for medical reasons or limit  
5 the patient's fitness to perform his or her present employment,  
6 provided that no statement of medical cause is included in the  
7 information disclosed.

8 (9) Unless the provider of health care or health care service plan  
9 is notified in writing of an agreement by the sponsor, insurer, or  
10 administrator to the contrary, the information may be disclosed to  
11 a sponsor, insurer, or administrator of a group or individual insured  
12 or uninsured plan or policy that the patient seeks coverage by or  
13 benefits from, if the information was created by the provider of  
14 health care or health care service plan as the result of services  
15 conducted at the specific prior written request and expense of the  
16 sponsor, insurer, or administrator for the purpose of evaluating the  
17 application for coverage or benefits.

18 (10) The information may be disclosed to a health care service  
19 plan by providers of health care that contract with the health care  
20 service plan and may be transferred among providers of health care  
21 that contract with the health care service plan, for the purpose of  
22 administering the health care service plan. Medical information  
23 may not otherwise be disclosed by a health care service plan except  
24 in accordance with the provisions of this part.

25 (11) Nothing in this part shall prevent the disclosure by a  
26 provider of health care or a health care service plan to an insurance  
27 institution, agent, or support organization, subject to Article 6.6  
28 (commencing with Section 791) of Part 2 of Division 1 of the  
29 Insurance Code, of medical information if the insurance  
30 institution, agent, or support organization has complied with all  
31 requirements for obtaining the information pursuant to Article 6.6  
32 (commencing with Section 791) of Part 2 of Division 1 of the  
33 Insurance Code.

34 (12) The information relevant to the patient's condition and  
35 care and treatment provided may be disclosed to a probate court  
36 investigator engaged in determining the need for an initial  
37 conservatorship or continuation of an existent conservatorship, if  
38 the patient is unable to give informed consent, or to a probate court  
39 investigator, probation officer, or domestic relations investigator

1 engaged in determining the need for an initial guardianship or  
2 continuation of an existent guardianship.

3 (13) The information may be disclosed to an organ  
4 procurement organization or a tissue bank processing the tissue of  
5 a decedent for transplantation into the body of another person, but  
6 only with respect to the donating decedent, for the purpose of  
7 aiding the transplant. For the purpose of this paragraph, the terms  
8 “tissue bank” and “tissue” have the same meaning as defined in  
9 Section 1635 of the Health and Safety Code.

10 (14) The information may be disclosed when the disclosure is  
11 otherwise specifically authorized by law, such as the voluntary  
12 reporting, either directly or indirectly, to the federal Food and  
13 Drug Administration of adverse events related to drug products or  
14 medical device problems.

15 (15) Basic information, including the patient’s name, city of  
16 residence, age, sex, and general condition, may be disclosed to a  
17 state or federally recognized disaster relief organization for the  
18 purpose of responding to disaster welfare inquiries.

19 (16) The information may be disclosed to a third party for  
20 purposes of encoding, encrypting, or otherwise anonymizing data.  
21 However, no information so disclosed shall be further disclosed by  
22 the recipient in any way that would be violative of this part,  
23 including the unauthorized manipulation of coded or encrypted  
24 medical information that reveals individually identifiable medical  
25 information.

26 (17) For purposes of disease management programs and  
27 services as defined in Section 1399.901 of the Health and Safety  
28 Code, information may be disclosed as follows: (A) to any entity  
29 contracting with a health care service plan or the health care  
30 service plan’s contractors to monitor or administer care of  
31 enrollees for a covered benefit, provided that the disease  
32 management services and care are authorized by a treating  
33 physician, or (B) to any disease management organization, as  
34 defined in Section 1399.900 of the Health and Safety Code, that  
35 complies fully with the physician authorization requirements of  
36 Section 1399.902 of the Health and Safety Code, provided that the  
37 health care service plan or its contractor provides or has provided  
38 a description of the disease management services to a treating  
39 physician or to the health care service plan’s or contractor’s  
40 network of physicians. Nothing in this paragraph shall be

1 construed to require physician authorization for the care or  
2 treatment of the adherents of any well-recognized church or  
3 religious denomination who depend solely upon prayer or spiritual  
4 means for healing in the practice of the religion of that church or  
5 denomination.

6 (d) Except to the extent expressly authorized by the patient or  
7 enrollee or subscriber or as provided by subdivisions (b) and (c),  
8 no provider of health care, health care service plan, contractor, or  
9 corporation and its subsidiaries and affiliates shall intentionally  
10 share, sell, ~~market~~ *use for marketing*, or otherwise use any medical  
11 information for any purpose not necessary to provide health care  
12 services to the patient.

13 (e) Except to the extent expressly authorized by the patient or  
14 enrollee or subscriber or as provided by subdivisions (b) and (c),  
15 no contractor or corporation and its subsidiaries and affiliates shall  
16 further disclose medical information regarding a patient of the  
17 provider of health care or an enrollee or subscriber of a health care  
18 service plan or insurer or self-insured employer received under  
19 this section to any person or entity that is not engaged in providing  
20 direct health care services to the patient or his or her provider of  
21 health care or health care service plan or insurer or self-insured  
22 employer.

23 ~~SEC. 4.~~

24 *SEC. 3.* Section 56.11 of the Civil Code is amended to read:

25 56.11. Any person or entity that wishes to obtain medical  
26 information pursuant to subdivision (a) of Section 56.10, other  
27 than a person or entity authorized to receive medical information  
28 pursuant to subdivision (b) or (c) of Section 56.10, shall obtain a  
29 valid authorization for the release of this information.

30 An authorization for the release of medical information by a  
31 provider of health care, health care service plan, pharmaceutical  
32 company, or contractor shall be valid if it:

33 (a) Is handwritten by the person who signs it or is in typeface  
34 no smaller than 12-point type.

35 (b) Is clearly separate from any other language present on the  
36 same page and is executed by a signature which serves no other  
37 purpose than to execute the authorization.

38 (c) Is signed and dated by one of the following:

39 (1) The patient. A patient who is a minor may only sign an  
40 authorization for the release of medical information obtained by

1 a provider of health care, health care service plan, pharmaceutical  
2 company, or contractor in the course of furnishing services to  
3 which the minor could lawfully have consented under Part 1  
4 (commencing with Section 25) or Part 2.7 (commencing with  
5 Section 60).

6 (2) The legal representative of the patient, if the patient is a  
7 minor or an incompetent. However, authorization may not be  
8 given under this subdivision for the disclosure of medical  
9 information obtained by the provider of health care, health care  
10 service plan, pharmaceutical company, or contractor in the course  
11 of furnishing services to which a minor patient could lawfully have  
12 consented under Part 1 (commencing with Section 25) or Part 2.7  
13 (commencing with Section 60).

14 (3) The spouse of the patient or the person financially  
15 responsible for the patient, where the medical information is being  
16 sought for the sole purpose of processing an application for health  
17 insurance or for enrollment in a nonprofit hospital plan, a health  
18 care service plan, or an employee benefit plan, and where the  
19 patient is to be an enrolled spouse or dependent under the policy  
20 or plan.

21 (4) The beneficiary or personal representative of a deceased  
22 patient.

23 (d) States the specific uses and limitations on the types of  
24 medical information to be disclosed.

25 (e) States the name or functions of the provider of health care,  
26 health care service plan, pharmaceutical company, or contractor  
27 that may disclose the medical information.

28 (f) States the name or functions of the persons or entities  
29 authorized to receive the medical information.

30 (g) States the specific uses and limitations on the use of the  
31 medical information by the persons or entities authorized to  
32 receive the medical information.

33 (h) States a specific date after which the provider of health care,  
34 health care service plan, pharmaceutical company, or contractor is  
35 no longer authorized to disclose the medical information.

36 (i) Advises the person signing the authorization of the right to  
37 receive a copy of the authorization.

38 ~~SEC. 5.~~

39 *SEC. 4.* Section 56.17 of the Civil Code is amended to read:

1 56.17. (a) This section shall apply to the disclosure of genetic  
2 test results contained in an applicant's or enrollee's medical  
3 records by a health care service plan.

4 (b) Any person who negligently discloses results of a test for a  
5 genetic characteristic to any third party in a manner that identifies  
6 or provides identifying characteristics of the person to whom the  
7 test results apply, except pursuant to a written authorization as  
8 described in subdivision (g), shall be assessed a civil penalty in an  
9 amount not to exceed one thousand dollars (\$1,000) plus court  
10 costs, as determined by the court, which penalty and costs shall be  
11 paid to the subject of the test.

12 (c) Any person who willfully discloses the results of a test for  
13 a genetic characteristic to any third party in a manner that identifies  
14 or provides identifying characteristics of the person to whom the  
15 test results apply, except pursuant to a written authorization as  
16 described in subdivision (g), shall be assessed a civil penalty in an  
17 amount not less than one thousand dollars (\$1,000) and no more  
18 than five thousand dollars (\$5,000) plus court costs, as determined  
19 by the court, which penalty and costs shall be paid to the subject  
20 of the test.

21 (d) Any person who willfully or negligently discloses the  
22 results of a test for a genetic characteristic to a third party in a  
23 manner that identifies or provides identifying characteristics of the  
24 person to whom the test results apply, except pursuant to a written  
25 authorization as described in subdivision (g), that results in  
26 economic, bodily, or emotional harm to the subject of the test, is  
27 guilty of a misdemeanor punishable by a fine not to exceed ten  
28 thousand dollars (\$10,000).

29 (e) In addition to the penalties listed in subdivisions (b) and (c),  
30 any person who commits any act described in subdivision (b) or  
31 (c) shall be liable to the subject for all actual damages, including  
32 damages for economic, bodily, or emotional harm which is  
33 proximately caused by the act.

34 (f) Each disclosure made in violation of this section is a  
35 separate and actionable offense.

36 (g) The applicant's "written authorization," as used in this  
37 section, shall satisfy the following requirements:

38 (1) Is written in plain language and is in typeface no smaller  
39 than 12-point type.

(2) Is dated and signed by the individual or a person authorized to act on behalf of the individual.

(3) Specifies the types of persons authorized to disclose information about the individual.

(4) Specifies the nature of the information authorized to be disclosed.

(5) States the name or functions of the persons or entities authorized to receive the information.

(6) Specifies the purposes for which the information is collected.

(7) Specifies the length of time the authorization shall remain valid.

(8) Advises the person signing the authorization of the right to receive a copy of the authorization. Written authorization is required for each separate disclosure of the test results.

(h) This section shall not apply to disclosures required by the Department of Health Services necessary to monitor compliance with Chapter 1 (commencing with Section 124975) of Part 5 of Division 106 of the Health and Safety Code, nor to disclosures required by the Department of Managed Care necessary to administer and enforce compliance with Section 1374.7 of the Health and Safety Code.

(i) For purposes of this section, “genetic characteristic” has the same meaning as that set forth in subdivision (d) of Section 1374.7 of the Health and Safety Code.

~~SEC. 6.~~

SEC. 5. Section 56.21 of the Civil Code is amended to read:  
56.21. An authorization for an employer to disclose medical information shall be valid if it:

(a) Is handwritten by the person who signs it or is in typeface no smaller than 12-point type.

(b) Is clearly separate from any other language present on the same page and is executed by a signature which serves no purpose other than to execute the authorization.

(c) Is signed and dated by one of the following:

(1) The patient, except that a patient who is a minor may only sign an authorization for the disclosure of medical information obtained by a provider of health care in the course of furnishing services to which the minor could lawfully have consented under



1 Part 1 (commencing with Section 25) or Part 2.7 (commencing  
2 with Section 60) of Division 1.

3 (2) The legal representative of the patient, if the patient is a  
4 minor or incompetent. However, authorization may not be given  
5 under this subdivision for the disclosure of medical information  
6 which pertains to a competent minor and which was created by a  
7 provider of health care in the course of furnishing services to  
8 which a minor patient could lawfully have consented under Part  
9 1 (commencing with Section 25) or Part 2.7 (commencing with  
10 Section 60) of Division 1.

11 (3) The beneficiary or personal representative of a deceased  
12 patient.

13 (d) States the limitations, if any, on the types of medical  
14 information to be disclosed.

15 (e) States the name or functions of the employer or person  
16 authorized to disclose the medical information.

17 (f) States the names or functions of the persons or entities  
18 authorized to receive the medical information.

19 (g) States the limitations, if any, on the use of the medical  
20 information by the persons or entities authorized to receive the  
21 medical information.

22 (h) States a specific date after which the employer is no longer  
23 authorized to disclose the medical information.

24 (i) Advises the person who signed the authorization of the right  
25 to receive a copy of the authorization.

26 *SEC. 6. Section 56.268 is added to the Civil Code, to read:*

27 *56.268. (a) Except as otherwise required by law, no provider*  
28 *of health care, health care service plan, or contractor may be*  
29 *remunerated for providing any information or data relating to a*  
30 *prescription if that information or data includes identifiable*  
31 *information concerning the prescribing physician.*

32 *(b) For purposes of this section, "identifiable information*  
33 *concerning the prescribing physician" means any information, in*  
34 *written or electronic form, that can reasonably be expected to*  
35 *further the identification of a prescribing physician, and includes,*  
36 *but is not limited to, the name, address, ZIP Code, telephone or fax*  
37 *number, e-mail address, or medical license number of a*  
38 *prescribing physician.*

1     (c) *For purposes of this section, “remuneration” includes, but*  
2 *is not limited to, gifts, fees, payments, subsidies, or other economic*  
3 *benefits.*

4     SEC. 7. No reimbursement is required by this act pursuant to  
5 Section 6 of Article XIII B of the California Constitution because  
6 the only costs that may be incurred by a local agency or school  
7 district will be incurred because this act creates a new crime or  
8 infraction, eliminates a crime or infraction, or changes the penalty  
9 for a crime or infraction, within the meaning of Section 17556 of  
10 the Government Code, or changes the definition of a crime within  
11 the meaning of Section 6 of Article XIII B of the California  
12 Constitution.

